

Senate Bill 85

By: Senators Tate of the 38th, Butler of the 55th, Seay of the 34th, Miles of the 43rd, Jones of the 10th and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to establish the Georgia Rx Program to reduce prescription drug prices for residents of this state; to provide a short title; to provide for legislative intent; to provide definitions; to provide for operation of the program; to establish the amount of rebates; to require disclosure of savings to program enrollees; to require drug manufacturers who sell prescription drugs to the state to enter into a rebate agreement; to provide for the commissioner of community health to negotiate rebates with drug manufacturers; to require retail pharmacies that participate in the program to discount the price of drugs covered by a rebate agreement; to provide for participating pharmacies to submit claims and receive reimbursement for discounted prices; to provide for the collection of utilization data; to provide for the disclosure of the names of manufacturers who do not enter into rebate agreements; to provide for resolution of discrepancies in rebate amounts; to establish a dedicated fund for rebates; to provide for reports; to provide for outreach efforts; to authorize the adoption of rules and regulations; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding at the end a new chapter to read as follows:

"CHAPTER 46

31-46-1.

This chapter shall be known and may be cited as the 'Georgia Rx Act.'

1 31-46-2.

2 The General Assembly finds that affordability is critical in providing access to prescription
3 drugs for uninsured residents of this state. Since the state is currently utilizing pharmacy
4 benefit managers for a variety of programs, the state may effectively and practically act as
5 a market participant on behalf of all uninsured residents. It is the intent of the General
6 Assembly to create a prescription drug program to enable the state to act as a pharmacy
7 benefit manager in order to make prescription drugs more affordable for qualified residents
8 of this state and to improve their overall health and quality of life through negotiating
9 voluntary rebates with prescription drug companies.

10 31-46-3.

11 As used in this chapter, the term:

12 (1) 'Average wholesale price' means the wholesale price charged on a specific
13 commodity that is assigned by the drug manufacturer and is listed in a nationally
14 recognized drug pricing file.

15 (2) 'Commissioner' means the commissioner of community health.

16 (3) 'Department' means the Department of Community Health.

17 (4) 'Discounted price' means a discounted price that is equal to the manufacturer's rebate
18 obtained by the state less any administrative fees.

19 (5) 'Labeler' means an entity or person that receives prescription drugs from a
20 manufacturer or wholesaler and repackages those drugs for later retail sale and that has
21 a labeler code from the federal Food and Drug Administration under 21 C.F.R. Section
22 207.20 (1999).

23 (6) 'Manufacturer' means a manufacturer of prescription drugs as defined in 42 U.S.C.
24 Section 1396r-8(k)(5), including a subsidiary or affiliate of a manufacturer.

25 (7) 'Participating retail pharmacy' or 'retail pharmacy' means a retail pharmacy located
26 in this state or another business licensed to dispense prescription drugs in this state that
27 participates in the state Medicaid program or voluntarily agrees to participate in the
28 program provided in this chapter.

29 (8) 'Pharmacy benefit manager' means an entity that procures prescription drugs at a
30 negotiated rate under a contract.

31 (9) 'Program' means the Georgia Rx Program.

32 (10) 'Qualified resident' means a person who:

33 (A) Either:

34 (i) Is 55 years of age or older;

35 (ii) Is eligible for assistance under the medicare program; or

36 (iii) Has a net family income below 350 percent of the federal poverty level;

(B) Has been a resident of this state for at least 12 months;

(C) Has no insurance coverage for prescription drugs;

(D) Is not qualified for the state's Medicaid program; and

(E) Has obtained a program card from the department.

(11) 'Rebate' means the rebate supplied to the state by a drug manufacturer which shall be sufficient to cover the administrative costs of the program to the department as well as the discount provided to retail pharmacies.

31-46-4.

(a) The Georgia Rx Program is established with the department to lower prescription drug prices for qualified residents of this state through the negotiation of discounts and rebates with drug manufacturers or labelers.

(b) A drug manufacturer or labeler that sells prescription drugs in this state through any publicly supported pharmaceutical assistance program shall enter into a rebate agreement with the department for the program. The rebate agreement shall require the manufacturer or labeler to make rebate payments to the state each calendar quarter or according to a schedule established by the department.

(c) The commissioner shall negotiate the amount of the rebate required from a manufacturer or labeler in accordance with this subsection:

(1) The commissioner shall take into consideration the rebate calculated under the Medicaid Drug Rebate Program pursuant to 42 U.S.C. Section 1396r-8, the price provided to eligible entities under 42 U.S.C. Section 256b, the average wholesale price of prescription drugs, and any other information on prescription drug prices, discounts, and rebates; and

(2) The commissioner shall use his or her best efforts to obtain an amount equal to or greater than the amount of any discount, rebate, or price reduction for prescription drugs provided to the federal government.

(d) Retail pharmacies or other businesses licensed to dispense prescription drugs located in this state that participate in the state Medicaid program shall participate in this program.

(e) No later than January 1, 2006, any participating retail pharmacy that sells prescription drugs covered by a rebate agreement pursuant to this Code section shall discount the retail price of those drugs sold to qualified residents as follows:

(1) The department shall establish discounted prices for drugs covered by a rebate agreement and shall promote the use of efficacious and reduced-cost drugs, taking into consideration reduced prices for state and federally capped drug programs, differential dispensing fees, administrative overhead, and incentive payments; and

(2) In determining the amount of discounted prices, the department shall consider an average of all rebates provided pursuant to this Code section, weighted by sales of drugs subject to these rebates over the most recent 12 month period for which the information is available.

31-46-5.

The State Board of Pharmacy shall adopt rules and regulations pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' requiring disclosure by participating retail pharmacies to qualified residents of the amount of savings provided as a result of the Georgia Rx Program. The rules and regulations must consider and protect information that is proprietary in nature.

31-46-6.

(a) The department may not impose transaction charges under the program on retail pharmacies that submit claims or receive payments under the program.

(b) A participating retail pharmacy shall submit claims to the department to verify the amount charged to qualified residents.

(c) On a biweekly basis, the department shall reimburse a participating retail pharmacy for discounted prices provided to qualified residents and professional fees. The professional fee shall be no less than \$3.00 per prescription.

(d) The department shall collect utilization data from the participating retail pharmacies submitting claims necessary to calculate the amount of the rebate from the manufacturer or labeler. The department shall protect the confidentiality of all information obtained under the program to the extent provided by state or federal law, rule, or regulation.

31-46-7.

(a) The names of manufacturers and labelers who do not enter into rebate agreements pursuant to this chapter are public information and shall be released to health care providers and the public.

(b) The commissioner shall provide the General Assembly with an annual report of the names of manufacturers and labelers who have entered into rebate agreements as well as the names of manufacturers and labelers who have not entered into rebate agreements pursuant to this chapter.

31-46-8.

(a) The names of retail pharmacies and other businesses licensed to dispense prescription drugs in this state who do not participate in the program under this chapter are public information and shall be released to health care providers and the public.

(b) The commissioner shall provide the General Assembly with an annual report of the names of retail pharmacies and other businesses licensed to dispense prescription drugs in this state that do and that do not participate in the program under this chapter.

31-46-9.

Discrepancies in rebate amounts shall be resolved using the following process:

(1) If there is a discrepancy in the manufacturer's or labeler's favor between the amount claimed by a pharmacy and the amount rebated by the manufacturer or labeler, the department, at the department's expense, may hire a mutually agreed upon independent auditor. If a discrepancy still exists following the audit, the manufacturer or labeler shall justify the reason for the discrepancy or make payment to the department for any additional amount due;

(2) If there is a discrepancy against the interest of the manufacturer or labeler in the information provided by the department to the manufacturer or labeler regarding the manufacturer's or labeler's rebate, the manufacturer or labeler, at the manufacturer's or labeler's expense, may hire a mutually agreed upon independent auditor to verify the accuracy of the data supplied to the department. If a discrepancy still exists following the audit, the department shall justify the reason for the discrepancy or refund to the manufacturer or labeler any excess payment made by the manufacturer or labeler; and

(3) Following the procedures established in paragraphs (1) and (2) of this Code section, either the department or the manufacturer or labeler may request a hearing pursuant to the rules and regulations of the department and the Office of State Administrative Hearings.

31-46-10.

The Georgia Rx Dedicated Fund is established to receive revenue from manufacturers and labelers who pay rebates as provided in this chapter. The purposes of the fund are to reimburse retail pharmacies for discounted prices provided to qualified residents pursuant to this chapter; to reimburse the department for contracted services, administrative and associated computer costs, professional fees paid to participating retail pharmacies, and other reasonable program costs; and to benefit the program.

31-46-11.

The department shall report the enrollment and financial status of the program to the General Assembly by the second week of each regular legislative session.

31-46-12.

(a) The department shall establish simplified procedures for determining eligibility and issuing program enrollment cards to qualified residents and shall undertake outreach efforts to the extent funds are appropriated and made available to build public awareness of the program and maximize enrollment of qualified residents. The department shall be authorized to charge qualified residents an annual enrollment fee not to exceed \$15.00.

(b) The department may adjust the requirements and terms of the program to accommodate any new federally funded prescription drug program.

(c) The department may enter into alliances and develop regional strategies with the governments of other jurisdictions and with other public and private entities for the purpose of reducing prescription drug prices under this chapter.

31-46-13.

The department may contract with a third party or third parties to administer any or all components of the program, including, but not limited to, outreach, eligibility, claims, administration, and rebate recovery and distribution.

31-46-14.

The department shall administer the program in a manner that is advantageous to the program and the enrollees in the program. In implementing this chapter, the department may coordinate with other programs and may take actions to enhance efficiency, reduce the cost of prescription drugs, and maximize the benefits of the program to enrollees.

31-46-15.

The department may adopt rules and regulations pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' to implement the provisions of this chapter.

31-46-16.

The department may seek any waivers of federal law, rule, or regulation necessary to implement the provisions of this chapter."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.